

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH FRANCIS ELLIOT,

Defendant.

CASE NO. 09cr0082 JM

ORDER DENYING MOTION TO  
SUPPRESS EVIDENCE

Defendant Joseph Francis Elliot moves to suppress evidence on grounds that (1) the officer lacked probable cause or reasonable suspicion to stop the vehicle driven by Defendant and (2) the officer unlawfully searched the vehicle. The Government opposes the motion. Having carefully considered the moving papers, two rounds of supplemental briefing, the evidence presented at the time of the evidentiary hearing, applicable authorities, and the court record, the court denies the motion to suppress evidence.

**BACKGROUND**

The following background statement is derived from the evidence presented at the time of the evidentiary hearing conducted on April 27, 2009. At around 9:00 a.m. on December 8, 2008 Carlsbad Police Officer Severy observed a black Silverado pickup truck with Maryland plates and noticed dark tinting on the side windows and a cracked windshield. Each observed defect is an infraction of Cal. Vehicle Code §§ 26708 and 26710, respectively. The officer initiated a traffic stop. The driver, Defendant Elliot, did not have his driver's license with him but provided the officer with his California

1 driver's license number and the vehicle's Maryland registration, showing Defendant as the registered  
2 owner.

3 Officer Severy conducted a records check which revealed (1) the driver's license of Defendant  
4 had been and still was suspended and (2) Defendant's criminal history. Officer Severy then requested  
5 Defendant to exit the vehicle and to sit on the curb. Officer Severy sought to remove and store the  
6 vehicle pursuant to Vehicle Code §22651(p) - unlicensed driver.<sup>1</sup> Officer Severy asked Defendant for  
7 consent to search the vehicle, which was the officer's standard operating procedure even in those  
8 circumstances where he believed consent was unnecessary. Defendant declined to give his consent  
9 to search the vehicle.

10 Officer Severy testified that he then conducted an inventory search pursuant to Carlsbad Police  
11 Department Policy Manual Section 510.4 and discovered a semi-automatic handgun and four  
12 ammunition clips in a non-factory compartment located in the truck's center console. Officer Severy  
13 testified that he lifted-up a loose cup holder from the center console of the truck. He further testified  
14 that although the cup holder is normally fastened to the console, his experience was that individuals  
15 can place items, including contraband, in the space underneath the cup holder. Following discovery  
16 of the weapon, Defendant was arrested, handcuffed, and transported to the Carlsbad Police Station.<sup>2</sup>

17 A criminal records check revealed that Defendant, on April 28, 1997, was convicted of  
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19 <sup>1</sup> Cal. Vehicle Code §22651(p) provides:

20 A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the  
21 Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or  
22 enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a  
vehicle is located, may remove a vehicle located within the territorial limits in which the officer or  
employee may act, under the following circumstances:

23  
24 (p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section  
25 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not  
26 impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or  
27 from private property after having been on a highway or public land, shall not be released to the  
registered owner or his or her agent, except upon presentation of the registered owner's or his or her  
agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration,  
or upon order of a court.

28 <sup>2</sup> Defendant does not dispute the proposition that once the firearm was discovered, probable  
cause to arrest Defendant existed.

1 possession and sale of a controlled substance in violation of H & S §11378. On January 8, 2009  
2 Defendant was charged in a two count federal indictment with being a felon in possession and  
3 possession of a firearm with an obliterated serial number. By means of the present motion, Defendant  
4 moves to suppress evidence of the handgun.

## 5 **DISCUSSION**

### 6 Lack of Probable Cause to Stop the Vehicle

7 Defendant first contends that the Government will not be able to establish that the tinting on  
8 the windows or the alleged crack in the windshield violated the vehicle codes. (Motion at p.3:8-9).  
9 This argument is not persuasive. “As a general matter, the decision to stop an automobile is  
10 reasonable where the police have probable cause to believe that a traffic violation has occurred.”  
11 Whren v. United States, 517 U.S. 806 (1996). An investigatory stop; is also justified where the officer  
12 has reasonable suspicion of wrongdoing. United States v. King, 244 F.3d 736, 738 (9<sup>th</sup> 2001). Here,  
13 Officer Severy had both probable cause and reasonable suspicion to stop the vehicle. He testified that  
14 the tinting on the side windows and the cracked windshield violated Cal. Vehicle Code §§ 26708 and  
15 26710, respectively. The Government also produced photographs of the vehicle demonstrating that  
16 the side windows were “tinted” darker than permitted by law, and that the windshield had extensive  
17 cracks. (Gov’t Exhs. 4, 6 - 14).

18 In sum, the court denies the motion to suppress based upon lack of probable cause or  
19 reasonable suspicion to stop the vehicle.

### 20 Unlawful Search of the Vehicle

21 Defendant argues that the search of the vehicle was an unlawful search incident to arrest under  
22 Arizona v. Gant, –U.S. –, 2009 WL 1045962 (April 21, 2009) and, alternatively, an unlawful  
23 inventory search. As the search of the vehicle was conducted pursuant to established inventory  
24 procedures adopted by the Carlsbad Police Department, the court does not reach the search incident  
25 to arrest issue.

26 An inventory search is an incidental administrative step following a decision to remove a  
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1 vehicle for either storage or impound.<sup>3</sup> Illinois v. LaFayette 462 U.S. 640, 643-644 (1983). An  
 2 inventory search of an impounded or stored vehicle is reasonable under the Fourth Amendment  
 3 provided law enforcement has a standardized policy regarding the impound/storage decision and  
 4 search. Colorado v. Bertine, 479 U.S. 367, 374-375 (1987).

5 As the United States Supreme Court has recognized, “inventory searches are now a  
 6 well-defined exception to the warrant requirement of the Fourth Amendment.” Colorado v. Bertine,  
 7 479 U.S. at p. 371. “In the interests of public safety and as part of what the Court has called  
 8 ‘community caretaking functions,’ [citation] automobiles are frequently taken into police custody.”  
 9 South Dakota v. Opperman, 428 U.S. at p. 368. “[I]t is undisputed that once a vehicle has been  
 10 impounded, the police may conduct an inventory search.” United States v. Wanless, 882 F.2d 1459,  
 11 1463 (9th Cir.1989). “[L]ocal police departments generally follow a routine practice of securing and  
 12 inventorying the automobiles’ contents. These procedures developed in response to three distinct  
 13 needs: the protection of the owner’s property while it remains in police custody [citation]; the  
 14 protection of the police against claims or disputes over lost or stolen property [citation]; and the  
 15 protection of the police from potential danger [citation]. The practice has been viewed as essential to  
 16 respond to incidents of theft or vandalism.” South Dakota v. Opperman, 428 U.S. at 369. Anything  
 17 observed during the inventory search is admissible against the defendant. Id. at 376.

18 In evaluating the reasonableness of inventory searches under the Fourth Amendment, the  
 19 Supreme Court “has consistently sustained police intrusions into automobiles impounded or otherwise  
 20 in lawful police custody where the process is aimed at securing or protecting the car and its contents.”  
 21 South Dakota v. Opperman, 428 U.S. at p. 373. “A so-called inventory search is not an independent  
 22 legal concept but rather an incidental administrative step following [impound]....” Illinois v.  
 23 LaFayette, 462 U.S. 640, 644 (1983). The search should be carried out pursuant to standardized  
 24 procedures, as this would “tend[ ] to ensure that the intrusion would be limited in scope to the extent  
 25 necessary to carry out the caretaking function.” South Dakota v. Opperman, 428 U.S. at 375. “The  
 26 policy or practice governing inventory searches should be designed to produce an inventory. The  
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28 <sup>3</sup> Officer Severy testified that the only difference between storing a vehicle and impounding  
 it is the minimum 30 day period during which an impounded vehicle may not be released.

1 individual police officer must not be allowed so much latitude that inventory searches are turned into  
2 a purposeful and general means of discovering evidence of crime.” Florida v. Wells, 495 U.S. 1, 4  
3 (1990). “[A]n inventory search is reasonable under the Fourth Amendment only if it is done in  
4 accordance with standard procedures that limit the discretion of the police.” Id. at 8.

5 Here, the court concludes that (1) the vehicle was to be properly towed and stored and (2)  
6 Officer Severy conducted a valid inventory search pursuant to Carlsbad Police Department Policy  
7 Manual Section 510.4. First, California courts have repeatedly held that §22651 provides police  
8 officers with the clear authority to impound or store vehicles. People v. Green, 46 Cal.App.4th 367  
9 (1996). Second, the inventory search was conducted in compliance with Carlsbad Police Department  
10 Policy Manual Section 510.4. That policy provides:

11 All property in a stored or impounded vehicle shall be inventoried and listed on the  
12 vehicle storage form. This includes the trunk and any compartments or containers,  
13 even if closed and/or locked. Members conducting inventory searches should be as  
14 thorough and accurate as practical in preparing an itemized inventory. These inventory  
procedures are for the purpose of protecting an owner’s property while in police  
custody, to provide for the safety of officers, and to protect the Department against  
fraudulent claims of lost, stolen, or damaged property.

15 (Gov’t Exh. 22). Officer Severy testified that he followed the vehicle inventory policy of the Carlsbad  
16 Police Department. His testimony also establishes that the inventory search at issue was objectively  
17 reasonable under the Fourth Amendment. Officer Severy commenced the inventory search by  
18 jiggling the cup holder of the vehicle. Based upon his past experience with this type of console  
19 configuration, and noting the looseness of the cup holder, he simply lifted up and removed the cup  
20 holder without the use of any tools. This is not the case, as argued by Defendant, where Officer  
21 Severy used the inventory search as a pretext to dismantle the vehicle in an effort to discover  
22 incriminating evidence. To the contrary, Officer Severy was merely accessing a compartment which  
23 was readily available to Defendant and in which he had reposed a firearm. Defendant appears to argue  
24 that officers may only search the “glove compartment, or other compartments designed by the  
25 manufacturer to be used to hold items, bags, purses, [and] suitcases.” (Supp. Memo at p.4:9-10,  
26 Docket No. 28). Here, the space under the cup holder functioned as the equivalent of a glove  
27 compartment. In fact, Defendant could access the cup holder and retrieve the firearm even easier than  
28 from the glove compartment where he would have to reach from the drivers seat to the glove


1 compartment located on the passenger side of the vehicle's interior. Such an easily accessible non-  
2 factory compartment, as modified by Defendant by removing all fasteners from the cup holder, is the  
3 functional equivalent of a glove compartment.

4 With respect to Defendant's argument that the dismantling of the console invalidated the  
5 inventory search, the court notes again that no disassembly was required to remove the cup holder.  
6 Officer Severy simply lifted up and removed the cup holder. The cup holder was not attached by any  
7 fastener requiring disassembly. Defendant also argues that the inventory search was a pretext to  
8 search for evidence of a crime because Officer Severy did not list all the property located within the  
9 passenger compartment of the vehicle. Officer Severy testified that he lists groupings of items and  
10 noted, consistent with the inventory policy to be as "thorough and accurate as practical in preparing  
11 an itemized inventory," (Gov't Exh. 22), and that it is not always practical to list every item found  
12 within a vehicle when there are numerous items. While the inventory list could have been more  
13 detailed, this fact does not undermine the validity of the inventory search.

14 In sum, the motion to suppress is denied in its entirety.

15 **IT IS SO ORDERED.**

16 DATED: May 8, 2009

17   
18 Hon. Jeffrey T. Miller  
United States District Judge

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20 cc: All parties  
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